

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 ZENITH FREEDMAN,
12 Plaintiff,
13 v.
14 SHERIFF'S OFFICER TONG, et al.,
15 Defendants.

No. C 06-02916 CRB
ORDER

17 Plaintiff Zenith Freedman has submitted a request for appointment of counsel. Her
18 request is hereby DENIED.

19 Defendant has submitted a motion to dismiss the case due to Plaintiff's repeated
20 failure to comply with her discovery obligations. See Fed. R. Civ. P. 37, 41(b); see also
21 Nat'l Hockey League v. Metro Hockey Club, Inc., 427 U.S. 639, 640-41 (1976); Wanderer v.
22 Johnston, 910 F.2d 652 (9th Cir. 1990). The Court recognizes that Plaintiff has routinely
23 failed to produce responses to Defendant's discovery requests, and that she has repeatedly
24 violated orders by this Court and Magistrate Judge Zimmerman. Nonetheless, the Court
25 declines to exercise its discretion to dismiss the case. In light of Plaintiff's limited personal
26 resources and the fact that, by their own admission, "Defendants are unable to point to
27 specific documents that have not been produced," the ultimate sanction of dismissal is not
28 warranted here. The Ninth Circuit's guidance on the proper application of Rule 37 counsels

1 against dismissal in this case given the “public policy favoring disposition of cases on their
2 merits” and the fact that “less drastic sanctions” appear to have brought about a satisfactory
3 resolution of the discovery dispute. See Wanderer, 910 F.2d at 656 (quoting Malone v.
4 United States Postal Service, 833 F.2d 128, 130 (9th Cir.1987)).

5 **IT IS SO ORDERED.**

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8 Dated: March 19, 2007



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE